UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
07/010,225	02/03/87	FERNANDEZ H	1642

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EXAMINER	
WITZ, J	
ART UNIT	PAPER NUMBER
183	5

DATE MAILED: 01/05/89

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

[X] This application has been examined [ ] Responsive to communication filed on _____ [ ] This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), NO days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. [X] Notice of References Cited by Examiner, PTO-892.
2. [ ] Notice re Patent Drawing, PTO-948.
3. [ ] Notice of Art Cited by Applicant, PTO-1449
4. [ ] Notice of informal Patent Application, Form PTO-152
5. [ ] Information on How to Effect Drawing Changes, PTO-1474
6. [ ] _____

Part II SUMMARY OF ACTION

1. [X] Claims 1-16 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. [ ] Claims _____ have been cancelled.

3. [ ] Claims _____ are allowed.

4. [X] Claims 1-16 are rejected.

5. [ ] Claims _____ are objected to.

6. [ ] Claims _____ are subject to restriction or election requirement.

7. [ ] This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. [ ] Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. [ ] The corrected or substitute drawings have been received on _____. These drawings are [ ] acceptable; [ ] not acceptable (see explanation).

10. [ ] The [ ] proposed drawing correction and/or the [ ] proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been [ ] approved by the examiner. [ ] disapproved by the examiner (see explanation).

11. [ ] The proposed drawing correction, filed _____, has been [ ] approved. [ ] disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. [ ] Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has [ ] been received [ ] not been received

    [ ] been filed in parent application, serial no. _____; filed on _____.

13. [ ] Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. [ ] Other

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless-

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1, 2 and 8 are rejected under 35 U.S.C. 102 (b) as anticipated by or, in the alternative, under 35 U.S.C. 103 as obvious over Puchalski et al.

The claimed ingredients are disclosed within claimed proportions (see column 2, line 10 and column 4, line 11). References in the claims to a total volume of 8 ounces are considered to be an inherent quality of the cited reference since it is the proportion of ingredients that endows the composition with its qualities, not the total volume. In the alternative, given the disclosed proportions, it would have been obvious to one of ordinary skill in the art to produce those proportions in any desired volume.

Claims 1-10 are rejected under 35 U.S.C. 103 as being unpatentable over Pulchalski et al and Deckner in view of Kludas et al, JA '17 and JA '10 and further in view of Bailey, Vinson and JA '42.

Applicant claims a skin moisturizer comprising less than 2% soluble collagen in 8 ounces of water. The composition may potentially also contain 0.03-0.05% DMDM Hydantoin, less than 2% cucumber extract and/or 0.5-1.5% Panthenol. Pulchalski teaches a skin treating preparation which contains 0.1-10% soluble collagen, 0.1-3% panthenol and 0.1-5% dimethyldimethoyl hydantoin in deionized water. The basic mixture of the reference contains 1% collagen and 1% allantoin in water (see Example 1, column 4). This preparation is then used as additive to or basis for skin treating formulations. Deckner teaches the inclusion of skin conditioning agents in skin treating compositions

such as hydrolyzed animal protein and panthenol in the range of 0.01 to 5% and preferably from 0.05 to 2%. Dimethyldimethoyl hydantoin is also disclosed in Deckner as commonly included in skin treating compositions as a preservative. Kludas et al, JA '17 and JA '10 each disclosed the known inclusion of collagen in skin treating compositions for the purpose of improving skin roughness and reducing wrinkles. JA '17 in fact teaches that a preferable proportion of collagen in such formulations is 0.001 to 1.5%. Finally, each of the tertiary references, Bailey, Vinson and JA '42, teach the inclusion of cucumber juice in skin treating and particularly acne treating compositions. While cucumber extract is not the same as cucumber juice, the properties of the extract are considered to be inherent in the juice, the difference in efficacy present only in degree. Therefore, the extract is an obvious alternate to the teaching of the juice. Since the primary references teach the known combination of soluble collagen, DMDM hydantoin, panthenol and deionized water in skin treating compositions for their well-known properties and also in proportions within the limits or at least similar to those claimed and since the secondary references provide the motivation to prepare basic collagen-containing skin treating compositions, it would have been obvious to one of ordinary skill in the art to modify Deckner and Puchalski et al to produce the

claimed composition. It would have been further obvious to include the cucumber extract for its disclosed utility in light of its known inclusion in skin treating compositions. Claims drawn to producing 8 ounces of formula are also considered obvious since it is the proportion of claimed ingredients that endows the composition with its properties and utility.

Claims 11-16 are rejected under 35 U.S.C. 103 as being unpatentable over Deckner and Puchalski et al in view of Kludas et al, JA '17 and JA '10 and further in view of Wilder, Radulescu et al, and Stone. The composition of the claimed method is considered obvious over the prior art for the reasons cited supra. Wilder discloses a skin treating composition which may potentially contain collagen (see Example 13, column 11) and which may be sprayed on the skin (see column 5, line 45). Radulescu et al disclose a topical collagen spray. Finally, Stone reveals that it is desirable to apply many cosmetics in the form of a fine spray, and discloses a pump sprayer which is similar to that disclosed as useful in the dispensing of applicant's invention. Given the known application of collagen-containing skin treating compositions to the skin via a spray and given the general teaching of such application by a pump sprayer similar to that disclosed by applicant, it would have been obvious to one of ordinary skill in the art to dispense the disclosed composition on to the skin via a spray.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean Witz whose telephone number is (703) 557-3433.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 557-0664.

JWITZ:ce

12/31/88

Johnnie R. Brown
JOHNNIE R. BROWN
SUPERVISORY PATENT EXAMINER
ART UNIT 183